

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2011029739902**

TO: Department of Enforcement  
Financial Industry Regulatory Authority ("FINRA")

RE: Lincoln Financial Advisors Corporation (CRD No. 3978)  
Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Lincoln Financial Advisors Corporation ("LFA" or the "Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

**BACKGROUND**

LFA has been a registered broker-dealer with the SEC and a member of FINRA since 1969. The Firm conducts general securities business. It has 2,461 registered representatives and 567 branch offices, with its headquarters in Fort Wayne, Indiana.

**RELEVANT DISCIPLINARY HISTORY**

Respondent has no relevant disciplinary history.

## OVERVIEW

From approximately January 2010 through September 2011 (the "relevant period"), the Firm failed to adequately supervise the activities of a registered representative ("PT"), who engaged in unsuitable penny stock trading, in violation of FINRA rules and the Firm's procedures. Therefore, the Firm violated NASD Rule 3010(b), as well as FINRA 2010.<sup>1</sup>

## FACTS AND VIOLATIVE CONDUCT

The Firm had written supervisory procedures ("WSPs") that prohibited solicited penny stock transactions by firm representatives. Notwithstanding this prohibition, during the relevant period, PT placed over 1,700 penny stock orders in connection with at least 15 customers, which he marked unsolicited but many of which appear to have been solicited. With respect to four customers, PT recommended penny stock transactions that were unsuitable because they led to overconcentration of penny stocks in the customers' accounts, and were contrary to their stated investment objectives.

LFA failed to enforce its WSPs regarding solicited penny stock transactions, and failed to establish a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations in that, although it had a system to monitor low-priced securities transactions, the system was deficient in certain respects because it failed to detect the scope of, and prevent, PT's activities. Specifically, the Firm's exception reporting system triggered an alert whenever any penny stock transaction over \$5,000 executed. But, for orders executed in multiple lots under \$5,000, the system would trigger an alert only for the lot that caused the aggregate transaction to cross the \$5,000 threshold. With respect to PT, the vast majority of the penny stock purchases were executed in different lots, some of which were under \$5,000, and some which were over \$5,000. The system failed to trigger alerts on all lots executed under \$5,000, and therefore, those transactions were not specifically reviewed.

With respect to PT's low-priced securities transactions during the relevant period, there were approximately 150 alerts triggered on the Firm's exception reporting system. Despite these alerts, LFA did not detect the scope, or unsuitability, of PT's low-priced securities transactions because the Firm generally analyzed each particular transaction causing the exception trigger, in isolation. On three occasions, Firm analysts raised questions about the nature of PT's low-priced securities transactions, but the Firm either did not sufficiently investigate further or accepted PT's explanations. As a result, the Firm did not take any steps to restrict PT's trading activities until after the first customer

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<sup>1</sup> In October 2013, an Acceptance Waiver and Consent agreement was issued by FINRA (No. 2011029739901) in which PT consented to the entry of findings that he: (1) engaged in unauthorized trading in two accounts; (2) conducted discretionary trading in three accounts; (3) made unsuitable recommendations in low-priced securities in four accounts; (4) mismarked trade tickets for low-priced securities transactions as "unsolicited"; and (5) guaranteed loss with respect to one customer. As a result, PT was suspended for 10-months in all capacities. No fine was assessed due to a demonstrated inability to pay.

complaint in September 2011. Upon receipt of the first customer complaint in September 2011, the Firm suspended PT's trading authority. PT was terminated for violating Firm policy with respect to penny stock transactions in October 2011. From September 2011 through October 2012, the Firm received 15 complaints relating to PT and the Firm paid approximately \$616,109 in settlements. The customer complaints included allegations of unauthorized trading, unsuitable recommendations, and guaranteeing against loss, all in connection with low-priced securities.

Under NASD Rule 3010(b), each member firm is required to "establish, maintain and enforce written procedures to supervise" its business and the activities of its registered representatives "that are reasonably designed to achieve compliance" with NASD and FINRA rules. LFA failed to establish a supervisory system reasonably designed to detect solicited penny stock transactions and to monitor the suitability of low-priced securities transactions. There were gaps in the system and PT was able to circumvent the system while he engaged in substantial improper solicited and unsuitable penny stock activity. Therefore, the Firm failed to enforce its procedures with respect to low-priced securities, in violation of NASD Rule 3010(b) and FINRA Rule 2010.

B. Respondent also consents to the imposition of the following sanctions:

- A censure; and
- A fine in the amount of \$90,000.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

## **II.**

### **WAIVER OF PROCEDURAL RIGHTS**

Respondent specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;

- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudice of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### **III.**

#### **OTHER MATTERS**

Respondent understands that:

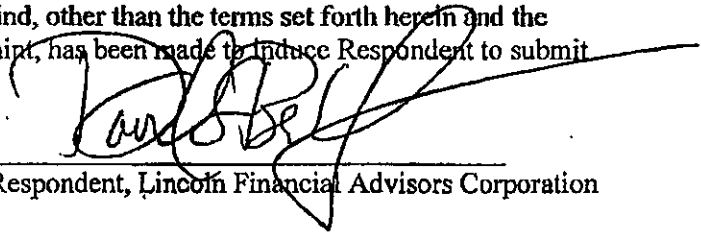
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against it; and
- C. If accepted:
  - 1. this AWC will become part of their permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
  - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
  - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

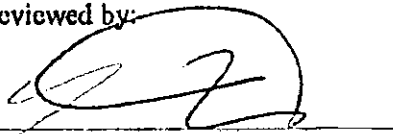
The undersigned on behalf of the Firm certifies that a person duly authorized to act on its behalf has read this AWC and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce Respondent to submit it.

12/8/2015  
Date (mm/dd/yyyy)

  
Respondent, Lincoln Financial Advisors Corporation

By: David S. Berkowitz, President

Reviewed by:



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Counsel for Respondent  
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Accepted by FINRA:

12/15/15  
Date

Signed on behalf of the  
Director of ODA, by delegated authority



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